



The Commonwealth of Massachusetts

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

December 27, 2005

D.T.E. 05-87

Investigation by the Department of Telecommunications and Energy on its own Motion commencing a rulemaking pursuant to 220 C.M.R. § 2.00 et seq. revising 220 C.M.R. §§ 11 and 14, in compliance with St. 2005, c. 140.

ORDER ADOPTING EMERGENCY REGULATIONS

I. INTRODUCTION

By this Order, and pursuant to G.L. c. 30A, § 2, the Department of Telecommunications and Energy (“Department”) adopts emergency regulations expanding eligibility for the low-income discount for electric and natural gas customers contained in 220 C.M.R. § 11.04 (5) and in 220 C.M.R. § 14.03 (2A). In addition, the Department adopts emergency regulations amending 220 C.M.R. §§ 11.04 and 14.03, to require electric and natural gas utility companies organized pursuant to G.L. c. 164 to produce and disseminate written materials informing customers of available cost-saving mechanisms, including rebates, discounts and credits that assist customers in lowering monthly bills.

With the commencement of the winter heating season, the steep rise in energy prices, and pursuant to a directive from the General Court, the emergency regulation is necessary for the public safety and general welfare of citizens of the Commonwealth, particularly low-income consumers. The Department must issue a final Order within 90 days after the public has an opportunity to comment pursuant to G.L. c. 30A, § 2. The emergency regulations are designated as 220 C.M.R. § 11.04 (5) (b), 220 C.M.R. § 11.04 (15), 220 C.M.R. § 14.03 (2A) (b), and 220 C.M.R. § 14.03 (11) and are effective upon filing with the Secretary of the Commonwealth.

II. HISTORY OF THE PROCEEDING

The General Court enacted St. 2005, c. 140, the Heating Energy Assistance Act (“Act”), with an Emergency Preamble so that the Act became effective immediately upon the Governor’s signature on November 22, 2005. Section 12 of the Act directs the Department to

promulgate regulations that expand eligibility for the low-income discount for gas customers to 200 percent of the federal poverty level. The Department's consumer protection regulations provide that each natural gas distribution company have on file a low-income tariff that provides a reduction in the distribution charge to eligible customers. 220 C.M.R.

§ 14.03 (2A) (a). Customers receiving a means-tested public benefit or LIHEAP, for which eligibility does not exceed 175 percent of the federal poverty level based on a household's gross income, have been eligible for the discount. 220 C.M.R. § 14.03 (2A) (b). The General Court has directed the Department to expand the eligibility for the gas discount to include recipients of those programs for which eligibility does not exceed 200 percent of the federal poverty level based on the household's gross income. ¹

Sections 11 and 12 of the Act amend G.L. c. 164, § 1F by expanding eligibility for the low-income discount for electric customers to 200 percent of the federal poverty level, and in any year in which eligibility for the low-income energy assistance program ("LIHEAP") exceeds 200 percent, the eligibility for the discount will expand accordingly. 220 C.M.R. §11.04 (5) addresses eligibility for the electric low-income discount and therefore must be amended by the Department for consistency with the Act.

¹ The criteria for state eligibility is based upon the federal law governing LIHEAP funding, which provides that eligibility is limited to households with incomes up to 150 percent of the federal poverty income guidelines, or, if higher, 60 percent of the state's median income. 42 U.S.C. § 8624(b)(2)(B)(i)-(ii)(1981). The Massachusetts General Court expanded state eligibility for the LIHEAP program to include households whose annual income is up to 200 percent of the federal poverty level. St. 2000, c. 316, § 2A.

Section 13 of the Act also directs the Department to promulgate regulations that require electric and natural gas companies organized pursuant to G.L. c. 164 to produce information for consumers regarding cost-savings mechanisms, including rebates, discounts and credits.

Consistent with the intent of the General Court and the Emergency Preamble in the Act, the Department opens this emergency rulemaking for the purpose of promulgating regulations to facilitate the immediate implementation of Sections 12 and 13. By this rulemaking, the Department expands eligibility for the low-income discount for electric and natural gas customers and directs electric and natural gas utility companies organized pursuant to G.L. c. 164 to produce and disseminate semi-annually written materials informing customers of available cost-saving mechanisms that assist customers in lowering monthly bills.

III. ANALYSIS

The Department's authority to adopt emergency regulations is clear. The Department's regulations provide that upon a finding that "the immediate adoption of a regulation is necessary for the public health, safety or general welfare, and that observance of requirements of notice and public hearing would be contrary to the public interest," the Department may dispense with such requirements and adopt emergency regulations.² 220 C.M.R. § 2.05(4); see also G.L. c. 30A, § 2.

² Before the amended regulation can become permanent, however, further action is required, including an opportunity for public comment. 220 C.M.R. § 2.05(4); see also G.L. c. 30A, § 2. A later public hearing and Department Order will provide that opportunity.

The expansion in eligibility for the low-income discount to Massachusetts households with incomes at 200 percent of the federal poverty level and the requirement that information regarding cost-saving mechanisms be disseminated semi-annually address the General Court's concern that increasing fuel costs expected this winter have the potential to create significant hardship for many low-income consumers. The increase in energy costs has been rapid and severe. The need for financial relief for low-income customers during this winter season necessitates use of the emergency regulation provision of the Administrative Procedure Act. G.L. c. 30A, § 2.

The Department finds that the immediate amendment of the rules and regulations governing eligibility for the low-income discount and requiring the dissemination of information regarding cost-saving mechanisms is necessary to provide financial relief to customers as fuel costs increase, and hence is necessary for the public health, safety or general welfare. The Department further finds that delaying implementation of these regulations caused by the requirements of notice and public comment would not be in the public interest. Delay might deny deserving natural gas consumers the discount and other benefits to which they are entitled. The time period required for ordinary rulemaking procedures is too lengthy to address consumers' pressing needs this winter.

Accordingly, the Department adopts as emergency regulations "Distribution Company Requirements" 220 C.M.R. § 11.04 (5) (b) and 220 C.M.R. § 11.04 (15) and "Local Distribution Company Requirements" 220 C.M.R. § 14.03 (2A) (a) and 220 C.M.R.

§ 14.03 (11). These regulations become effective upon filing with the Secretary of the Commonwealth and will remain in effect for a period not to exceed 90 days.

IV. ORDER

Accordingly, it is

ORDERED: That the regulations attached hereto and designated at 220 C.M.R.

§ 11.04 (5) (b), 220 C.M.R. § 11.04 (15), C.M.R. § 14.03 (2A) (a) and 220 C.M.R.

§ 14.03 (11) are reasonably necessary for the public health, safety or general welfare within the meaning of G.L. c. 30A, § 2; and it is

FURTHER ORDERED: That the regulations entitled “Distribution Company Requirements” and “Local Distribution Company Requirements” attached hereto are hereby ADOPTED; and it is

FURTHER ORDERED : That these regulations shall take effect upon filing with the
Secretary of the Commonwealth.

By Order of the Department,

/s/
Paul G. Afonso, Chairman

/s/
James Connelly, Commissioner

/s/
W. Robert Keating, Commissioner

/s/
Judith F. Judson, Commissioner

/s/
Brian Paul Golden, Commissioner